IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

OP.No. 27797 of 1999(H)

PETITIONER:

C.S.PARAMESWARAN PILLAI,
RETIRED EMPLOYMENT OFFICER,
'LAKSHMI NIVAS' ANDOOR P.O.,
VALAKAM, KOTTARAKKARA,
PIN 691 532.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.RESMI G. NAIR

RESPONDENTS:

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1. **STATE OF KERALA, REP.BY ITS**
CHIEF SECRETARY, SECRETARIATE,
THIRUVANANTHAPURAM.

2. **DIRECTOR OF EMPLOYMENT,**
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

O.P. No. 27797 OF 1999 H

Dated this the 10th day of January, 2007

J U D G M E N T

The petitioner retired from the service of the Government of Kerala as an Employment Officer on 29.2.1996. On 19.10.1996, the petitioner was served with a memo of charges along with a statement of allegations which is Ext.P1 in this original petition. On the ground that since the petitioner has already retired from service, no disciplinary action could have been initiated against him, this court in OP.No.3250/1997 quashed the memo of charges but giving liberty to the 2nd respondent herein to proceed against the petitioner under Rule 3 Part III of Kerala Service Rules. Ext.P2 is that judgment. After Ext.P2 judgment, proceedings were initiated against the petitioner under rule 59 (b) of Part III of the KSR. After affording an opportunity of personal hearing by Ext.P3, the petitioner was called upon to show cause why a sum of Rs.25/- should not be reduced from the monthly pension of the petitioner. The petitioner filed objection to the same by Ext.P4. However, the proposal to reduce the pension of the petitioner was confirmed by Ext.P5 order. The petitioner's review petition before the Government did not meet with success as the same was also dismissed

as Ext.P7 order. The petitioner is challenging Exts.P5 and P7 orders in this original petition.

2. The petitioner raises two contentions. First is that in so far as Exts.P5 and P7 orders do not contain any conclusion that the petitioner's service has not been thoroughly satisfactory, the respondents could not have invoked Rule 59(b) of Part III of the KSR to reduce the petitioner's pension. The second is that the impugned orders have been issued on the basis of a report in a vigilance enquiry in which the petitioner was neither heard nor was the copy of the report supplied to the petitioner. That being so, Exts.P5 and P7 orders are violative of the principles of natural justice and, therefore, unjustifiable, contends the petitioner.

3. I have heard the learned counsel for the petitioner as also the learned Government Pleader. The learned Government Pleader would argue in support of the impugned orders.

4. In so far as the first contention is concerned, I am not satisfied that because of the absence of any sentence in Ext.P5 order to the effect that the petitioner's service has not been thoroughly satisfactory the proceedings under Rule 59(b) would be bad, if the facts leading to the order contains sufficient material to show that the petitioner's service had not been thoroughly satisfactory. The absence of the words "the petitioner's service has not been thoroughly

satisfactory" would not in my opinion vitiate the orders passed under Rule 59(b). From Ext.P5 order, I find that the finding in Ext.P5 is that the petitioner had issued false certificate to a person to enable him to obtain employment in the Air India. If the finding to that effect is sustainable certainly that would be sufficient to conclude that the service of the petitioner had not been thoroughly satisfactory and it is not necessary to specifically state in order that because of the said finding the petitioner's service has found to be not thoroughly satisfactory. Therefore, I do not find any merit in that contention.

5. However, I feel that the petitioner is certainly entitled to take up a contention that he has been indicted on the basis of an enquiry and a report which has been arrived at without giving him an opportunity to show cause against the same. The learned Government Pleader would vehemently argue that since the vigilance had on an enquiry conducted for that purpose categorically found the petitioner to be guilty of issuing a false certificate to an applicant for employment and that reason was specifically mentioned in the notice and order, there is no violation of principles of natural justice and the impugned orders cannot be attacked on that ground. I disagree with the contentions of the learned Government Pleader. The learned Government Pleader could not satisfy me that at the time of vigilance enquiry, the petitioner was heard or that any evidence collected in that enquiry was put to the petitioner

giving him an opportunity to disprove the same. The petitioner was never given an opportunity to show cause against such a finding in the vigilance enquiry. The petitioner was never served with a copy of the enquiry report except to mention in the impugned order that in such an enquiry the petitioner was found guilty. That being so, violation of principles of natural justice is writ large on the entire proceedings. Petitioner's pension has been reduced on the basis of a vigilance report which has not been prepared in compliance with the principles of natural justice. That being so, Exts.P5 and P7 orders, which have been passed based on that vigilance report, are not sustainable in law. Accordingly, Exts.P5 and P7 orders are quashed. It is declared that the petitioner would be entitled to the full pension sanctioned to him. If any amount from his pension has been recovered pursuant to the impugned orders, the same shall be refunded to him, within two months from the date of receipt of the judgment and the petitioner shall be continued to be paid his full pension as sanctioned, every month.

The original petition is allowed as above.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.27797/99 h

J U D G M E N T

10th January, 2007